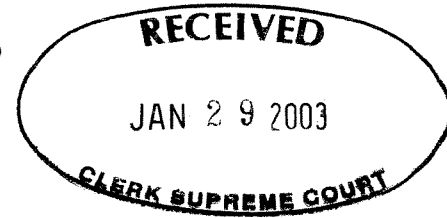


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Clerk  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48933

January 28, 2003

Re: ADM File No. 2002-38, Proposed Amendment of SBR 4(a)

1. Part one of the proposed amendment is to make a separate charge to every lawyer of \$15 annually to underwrite the operations of the Client Security Fund. The ABA website, to which the Court's administrative order directs interested persons, provides model rules for CSFs and an explanation for those rules. In particular, those rules track the existing Michigan CSF rules in declaring that there is no legal right to make a claim against the CSF.

That being so, the ABA offers this rationale:

The Fund is not a guarantor of honesty and integrity in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the profession collectively, or on the Fund, to compensate for a lawyer's misconduct. The Fund is a lawyer-financed public service, and payments by the Board is discretionary.

If the profession collectively owes no duty to the public to compensate for a lawyer's dishonesty, then, like other "public services" of the organized bar, such as advertising the wonderfulness of the legal profession to the general public, or lobbying the legislature, it is a form of First Amendment activity, which cannot be imposed on members who object. *Keller v State Bar of California*, 496 US 1; 110 S Ct 2228; 110 L Ed 2d 1 (1990); *Wooley v Maynard*, 430 US 705; 97 S Ct 1428; 51 L Ed 2d 752 (1977).

Either the profession has such a duty, in which case there should be a legal right of recovery from the CSF up to the legal limit, with judicial review, or this extra-legal combination of the Star Chamber and Santa Claus should be an entirely voluntary operation. Undersigned counsel can live with either scenario, but not with the continued imposition of an illegal tax to support the exercise of caprice and arbitrariness by a few select members of the bar with funds extorted from all. If others wish to delegate the State Bar to make gifts of their money to some and not to others, let them do so; undersigned, however, is perfectly capable of making his own charitable benefactions, and prefers to exercise his own discretion.

No doubt the State Bar will respond claiming that the operations of the CSF have been above reproach. As usual, it will be able to offer no empirical evidence to support such a claim, because there is no judicial review or other objective, empirical study to test the fairness, consistency, or evenhandedness of the CSF. As with ICLE's and the Grievance Administrator's

self-serving annual reports, never in either case in the past 30 years substantiated for effectiveness by independent review by an external auditing body having no financial or other unholy connections to the legal profession<sup>1</sup>, such *soi-disant* assertions of purity ring as hollow as professions of piety from an inquisitor at an *auto da fé*.

Therefore, either the CSF should be moved into the realm of law and order, or continued in its present format as a charitable voluntary activity of those members of the State Bar who wish to support it.

2. A second part of the proposal is to increase the dues component for the disciplinary system. I not only support this proposal in theory, but suggest that the Supreme Court do a management study, of the sort it did for itself, the Court of Appeals, the State Appellate Defender and the Michigan Assigned Appellate Counsel System, to determine a proper structure of salaries, investigators, attorneys, etc. so as to make the disciplinary system more prompt, more responsive, less political, and more professional. If as a result of that study more funding is shown to be needed to properly operate the grievance system to protect the public, then the dues component for discipline should be increased commensurately. Meanwhile, the present system is so badly operated that an immediate dues increase cannot be justified.

The discipline system has proved itself incapable as presently constituted of dealing with rich but outrageous lawyers who abuse judges, judicial staff, and opposing lawyers—of course, I mean Geoffrey Fieger, who, as a result of rulings unfavorable to him or his clients, personally attacked Justice Taylor and Judge E. Thomas Fitzgerald, among others, with impunity. The Grievance Board was completely cowed by Mr. Fieger and collapsed like a cheap cardboard suitcase in a downpour. The discipline system should be run like a police department's IAD, not as a lap dog for the rich and famous.

Similarly, the present discipline system has been frozen into inaction in dealing with complaints against Governor Engler, AG Granholm, and other attorneys occupying major elective offices. This is not to say that these politicians should have been disciplined; rather, the Grievance Administrator took too long by far to reject complaints against Mr. Engler (and, where the complaints were publicized, as those who request investigations have a right to do, the GA was also rather wrongly circumspect in not aggressively publicizing the rejection of those complaints), and is currently taking too long by far to resolve complaints against then-AG, now Governor Granholm and several of her top aides. There should be one standard for everyone, with swift but careful and thoughtful initial investigation, followed by either prompt dismissal where there is no merit, or by prompt formal proceedings otherwise. Explanations for any decision should be mandatory and not by form letter, which is meant to obfuscate and not inform the public that the system ostensibly serves.

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<sup>1</sup> In the case of the Grievance Administrator, the one independent audit in those three decades, by Judge Webster, former State Bar president, was damning in every particular. Imagine what criticisms an auditor neutral as to the State Bar of Michigan might have leveled!

This is not sour grapes; I have never been disciplined or investigated. I have filed a number of requests for investigation, too many of which were mishandled, and defended a few other attorneys, always successfully. The system needs regular independent audits and an inspector general who reports directly to the Chief Justice to assure its integrity and efficiency.

Respectfully submitted,

Allan Falk (P13278)

